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Appendix

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1959

No. 578

CHARLES MANNINA,

Petitioner,

vs.

INDUSTRIAL ACCIDENT COMMISSION OF THE STATE OF CALIFORNIA, FOOD MACHINERY AND CHEMICAL CORPORATION and CALIFORNIA CASUALTY INDEMNITY EXCHANGE,

Respondents.

SUPPLEMENTAL BRIEF OF PETITIONER.

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SUPPLEMENTAL BRIEF OF PETITIONER.

Since supplemental as well as reply briefs are permitted under Rule 24 and Petitioner's attorney deeming this one essential in this case of such great importance to the common people of America, it is hereby submitted.

It is prompted by two developments.

"DUE PROCESS" AS DEPENDENT UPON FACTS.

First of all, on reading in last night's Santa Clara Journal a feature story about the highest Court in our land interesting itself in the alleged "shuffle dance" of Sam Thompson, an elderly Negro, whose right to "due process", in a case where Kentucky law does not permit appeals on such trivial matters as to whether moving one's feet a few inches constitutes "loitering", seems to be dependent upon the *FACTS*, and remembering that Hiram Johnson once said that "*The facts, the inexorable facts, govern every situation*", and further realizing that were this case being argued orally before this high Court one of the learned Justice's might well inquire of Petitioner's attorney: "Is it an actual *fact* that doctors in California indulge in *guesses* in these hidden injury cases or aren't you over-dramatizing the situation?", let me cite to the Court an incident that actually happened in a Superior Court in a northern California county a few years ago when a very prominent orthopedic expert was on the stand in a jury trial of a hidden injury non-industrial accident case.

The good doctor, who is typical of his profession in California in that most "experts" naturally tend to color their "opinions" or "expert testimony" (high sounding words for guesses) in favor of whoever is paying for their services as such, had just finished testifying that the hidden injury victim had, in his considered opinion, no pain, and no disability and was perfectly able to work, when the plaintiff's attorney, on cross-examination, handed him a photostatic copy

of a "report" he had sent to him on the erroneous assumption that he had requested it rather than the insurance carrier's attorney and which he had returned to the doctor after photostating it, in which the doctor had stated just the opposite opinion to that just given in his sworn testimony, and asked him: "Doctor, do you have one opinion you give to the plaintiff's counsel and another exactly opposite opinion that you give to the defendants' counsel on the same state of facts?" The embarrassed doctor thought for a long time and then answered: "You know, I've often wondered about that myself".

In industrial accident cases, where the rights of the worker and his family are almost entirely dependent on such expert "opinions", "reports" or "guesses", when hidden injuries strike them, this situation is magnified a thousandfold and there is no way of exposing this vicious system of purchased justice which has crept into the judicial processes of the Industrial Accident Commission as "standard procedure" in the last quarter century since the workers lost the great guardian of their rights, Arthur Pillsbury, Governor Hiram Johnson's original appointee charged with organizing the Commission fifty years ago in such a simple manner that such injustices based on guesses would be rare.

INJUSTICES NOW COMMON.

Now that the Industrial Accident Commission of the State of California has firmly adopted this guess-

work system of deciding cases, and actually lauds it (Respondent's Brief, p. 28) as *"as sound a basis for decision"* as the testimony of the only person in the whole world that actually *KNOWS* the *facts*, injustices are bound to be common, every-day occurrences under it. They have been in California for the last decade and a half to the personal knowledge of your Petitioner's attorney, who, as the attorney for the 107 unions in the Santa Clara County Building Trades Council and Central Labor Council and most of their members for almost a decade, handled most of the industrial accident cases in the county and whose firm still handles much of this practice. In the Federal field, before the United States Bureau of Employees' Compensation, which supposedly guards the rights of 2½ million Federal employees, the rule is to rely *ONE HUNDRED PER CENT* on the guesses of the doctors and the injured worker isn't even allowed to testify as to the *FACTS*. The California *"NINETY-NINE PER CENT GUESSWORK RULE"* which satisfies the higher Courts of this State (under an Appellate Court dictum which the Commission considers to be the law in derogation of the State and Federal Constitutions, as brought out in our Petition) is doubtless followed in the other 49 States of the Union, human nature being what it is and this issue of guesswork justice never having been raised before in America, so far as is known, except when your Petitioner's attorney raised it before the United States Bureau of Employees' Compensation, its Director, its Department head, the President and the Bureau's Appeals Board in the *Naomi Lilly* case.

(Petition, p. 22), unsuccessfully except for one vote on the Appeals Board. It can, therefore, readily be seen that the rights of all of America's 70,000,000 workmen, any of whom may any day be felled by hidden industrial injuries, may well be involved in this appeal to the revered highest Court in the land on a question so simple as the one here presented as to whether the Court can take judicial notice that there isn't a person on the face of this earth who can gauge the severity of a headache.

FURTHER TRAGIC HISTORY AVERTED.

The second development that has necessitated this Supplemental Brief is the attempted suicide on January 12, 1960, of one of the victims of this vicious guesswork system, *Granville O. Burrow*, whose case is discussed on page 19 of the Petition herein and page 9 of the Reply Brief of Petitioner, and in which the referee stated frankly that he "*RELIED*" on the "*OPINION*" of one insurance company doctor in whom he had confidence in throwing the invisibly injured worker onto the industrial scrap heap as of July 8th of last year. There he has lain ever since, writhing in pain until he could stand it no longer, and, with his right leg growing numb and motionless, told his wife "This is it, honey, I can't take any more". When she returned from work as his substitute breadwinner she found him unconscious from an overdose of APC with Codeine, plus other tranquilizers he had found; and rushed him to the Sonoma County Hos-

pital at 3:30 o'clock in the morning. There he lies still begging for an operation to remove a ruptured disc in his back that four out of the six insurance company's paid examiners *GUESSED* he doesn't need but which an expert at Palo Alto *PROVED* by a *positive* electromyogram he does need badly after fifteen months of disability and conservative treatment. Pain pills he can't get from the carrier so he has to chisel them wherever he can and an operation they won't give him because the referee's pet doctor has *GUESSED* that there is nothing wrong with him, because in looking at him he can't see it. All the poor man has is an empty purse that used to contain weekly wages of $145.00 to support his family and an empty award for "medical attention" that he can't enforce. Is this *JUSTICE?*

Fortunately for the carrier and for the Commission the man didn't die from his suicide attempt. Had it been successful, it would have been blazoned forth on the front pages of every newspaper in the State, just as was the bombing of the residences of Industrial Accident Commission officials at Los Angeles a decade ago when one of these hidden injury workers failed to get relief from them, and California's bloody history that has marked the rise to human dignity of those who toil, as brought out on page 19 of the Petition filed herein, would have had another chapter written, not in blood, as were the other chapters, but nevertheless on the cold marble slab of the morgue that claimed the other victims of California's barbaric practices which are now a thing of the forgotten past.

for which justice no longer hangs her head in shame since the conditions have been remedied by an enlightened people.

THE HEAD OF JUSTICE STILL DROOPS.

The head of justice still droops, however, in this one field of hidden injuries, as no move to remedy the vicious system in vogue has been made by any responsible public official except for one Commissioner, Alexander Watchman, who died fighting against a system he saw eating out the lives of the invisibly injured workmen before him but which one man could not lick. It will take the ruling of this Court of Last Resort to do so, as no other power in this nation has the grasp of things that affect the every day lives of the people that the high Court has which has become lovingly known as the *"COMMON MAN'S COURT OF JUSTICE"*. It is there that his rights are protected on a down-to-earth basis, such as skin pigmentation and "shuffle dance" loitering. The learned Justices there do not dwell in an ivory tower and breathe the rarified atmosphere of precedent and of so-called "sound and realistic" systems that fail to give the one thing to be desired, namely, *JUSTICE*. They meet out *justice* in *equal* measure to the poor and to the rich and they concern themselves with such seemingly trivial matters as color, realities of factual situations and down-to-earth approaches to problems. Can they not see the need for such an approach in this case, where the issue is

so simple as a fact within the cognizance of everyone that the *severity of a headache cannot be measured by ANYONE?* We sincerely hope and pray that the Honorable Justices hearing this appeal will see this simple *FACT* and *forever do away with GUESS-WORK JUSTICE in America.*

Dated, San Jose, California,
January 14, 1960.

Respectfully submitted,
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